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UNITED STATES DISTRICT COURT  
FOR NORTHERN DISTRICT OF CALIFORNIA

VLADIMIR A. BALAREZO, individually and  
on behalf of others similarly situated

Plaintiff,

vs.

NTH CONNECT TELECOM INC., AND  
STEVEN CHEN,

Defendants

Case No.: C07-05243 JF

PLAINTIFFS' CASE MANAGEMENT  
STATEMENT

In accordance with the Standing Order for All Judges of the Northern District of California, the Plaintiffs hereby submit this Case Management Conference Statement.

1. **Jurisdiction and Service**

The basis for the Court's subject matter jurisdiction over Plaintiffs' claims is the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, as alleged in the Complaint. There are no existing issues regarding personal jurisdiction or venue. There are no parties that remain to be served.

2. **Facts**

Plaintiffs were employed as technician to install cable equipments for ComCast's customers. In this action, Plaintiffs seek class action certification for overtime and other wage and hour claims against Defendants under the authority of both federal and California law.

The principal factual issues in dispute are:

- Whether and to what extent Plaintiffs and the class they seek to represent

1 were not paid overtime to which they are entitled;

2 2. Whether and to what extent Plaintiffs and the class they seek to represent  
3 had not been provided with meal breaks as required by law.

4 3. Whether and to what extent Plaintiffs and the class they seek to present are  
5 owed money for using their own vehicles and tools in performing their duties.

### 6 **3. Legal Issues**

7 Plaintiffs have filed this action as a class action under Rule 23 of the Federal Rules of  
8 Civil Procedure. Plaintiffs also seek treatment of opt-in class action under 29 U.S.C. § 216(b).  
9 In their substantive allegations, Plaintiffs assert that Defendants failed to pay Plaintiff and a class  
10 of employees overtime pay in violation of California Labor Code §§ 501 and 1194 as well as in  
11 violation of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* Plaintiffs further allege that  
12 Defendants failed to pay Plaintiffs and the putative class members their wages upon termination  
13 in violation of California Labor Code § 201. Plaintiffs further allege that Defendants failed to  
14 reimburse Plaintiffs for using personal vehicles and tolls in performing their job duties. Finally,  
15 Plaintiffs seek restitution of overtime wages in accordance with California Business &  
16 Professions Code § 17200.

### 17 **4. Motions**

18 The parties anticipate the filing of the following motions:

19 (a) Defendants filed Rule 12(b) motion to dismiss. The motion was heard on  
20 February 22, 2008, and was denied;

21 (b) Plaintiffs filed a motion to conditionally certify FLSA class; the motion was heard  
22 on May 22, 2008 and was granted.

23 (c) Plaintiff filed a motion to compel production of documents; the motion was heard  
24 on July 1, 2008 and was granted.

25 (d) Plaintiffs expect to file a class certification motion under FED. R. CIV. PRO. 23  
once Defendants have produced documents.

1 (e) Plaintiff's Partial Summary Judgment Motion for Class Liability based on  
2 documents produced;

3 **5. Amendment of Pleadings**

4 Plaintiffs do not anticipate any amendments at this point.

5 **6. Evidence Preservation**

6  
7 Defendants have been notified by their counsel of the obligation to preserve all  
8 electronically stored evidence and have taken steps to do so.

9 **7. Disclosures**

10 The parties have made respective disclosures.

11 **8. Discovery**

12  
13 Plaintiffs have requested Defendants to produce comprehensive documents for all  
14 putative class members. Judge Trumbull granted the motion, ordering Defendants to produce the  
15 documents. However, Defendants have failed to produce documents thus far, claiming the  
16 person in charge of coordinating the documents production was on leave of absence recovering  
17 from a surgery until August 18, 2008. Defendants also claim inability to produce certain critical  
18 document although acknowledging the existence of the documents.

19 The Plaintiffs propose the following discovery and case management schedule:

- 20 (a) Deadline to complete fact discovery: April 30, 2009.
- 21 (b) Deadline for expert disclosure statements under Fed. R. Civ. P. 26: May 31,  
22 2009.
- 23 (d) Deadline to conduct expert discovery: June 30, 2009.
- 24 (e) Last day for hearing dispositive motions to be filed: June 19, 2009.
- 25 (f) Trial: September 2009.

1                   **9. Class Actions**

2                   Plaintiffs provide the following statement in compliance with Local Rule 16-9(b).

3                   (1)       The class action for claims under California law is maintained under Fed. R. Civ.  
4 P. 23(a)(1), 23(a)(2), 23(a)(3), 23(a)(4), 23(b)(3). This class action insofar as claims under the  
5 FLSA are asserted is maintainable under 29 U.S.C. § 216(b), as distinct from Fed. R. Civ. P. 23.

6                   (2)       Plaintiff proposes two separate classes:

7                   a)       FLSA claims: All non-exempt installation technicians : i) who worked for  
8 defendant commencing at any time since three years before the filing of this action; (the "FLSA  
9 Class"). Plaintiffs have filed a motion to conditionally certify the FLSA class; and the Court has  
10 granted the motion. Notice has been sent out to putative class, and the deadline for putative to  
11 return their consents to opt in this case is September 21, 2008.

12                   b)       California claims: All installation technicians who: i) worked for  
13 Defendants in California commencing at any time since four years before the filing of this  
14 action; (the "California Class"). A sub-class of California Class consists of all installation  
15 technicians whose employment with defendant terminated at any time in three years before the  
16 filing of this case (California § 203 Class).

17                   Plaintiffs will be in position to file a motion to certify such class once Defendant produce  
18 the documents.

19                   (3)       Plaintiffs are members of the Federal Class, and also members of the California  
20 Class and, like other members, were not paid overtime pay and was not provided required meal  
21 breaks and reimbursement for suing their personal vehicles and tolls in [performing job duties in  
22 violation of the FLSA and California labor law. According to the contact information provided  
23 by Defendants, the California Class and the Federal Class exceed 250 members.

24                   Plaintiff allege that common questions of law and fact predominate in this case. For  
25 example, the class members' rights insofar as this action is concerned arise from the Defendants'  
uniform payroll practice of paying straight time only, applicable to all non-exempt installation

1 technicians. In light of the commonality of the sources of the putative class members' rights,  
2 individual adjudications harbor the possibility of inconsistent adjudications. Plaintiffs have no  
3 conflicts of interest and will fairly and adequately represent both classes. Plaintiffs are not aware  
4 of any other pending litigation concerning the claims asserted herein nor of any difficulties that  
5 should be encountered in the management of this litigation as a class action.

6 (4) Plaintiffs plan to file motions for the Court to consider class certification no later  
7 than December 31, 2008, though Plaintiffs may file such motions sooner.

#### 8 **10. Related Cases**

9 There are no related cases or proceedings pending before another Judge of this Court or  
10 before another Court or administrative body.

#### 11 **11. Relief**

12 At this point, Plaintiff does not have sufficient record to estimate the damages.

#### 13 **12. Settlement and ADR**

14 Parties had an early settlement conference before Judge Trumbull. While there was  
15 limited discussion between parties about further mediation of this case, Defendants have yet to  
16 agree to participate in such a session.

#### 17 **13. Consent To Magistrate Judge For All Purposes**

18 N/A

#### 19 **14. Other References**

20 N/A

#### 21 **15. Narrowing Of Issues**

22 Plaintiffs do not expect the parties may be able to narrow the issues. However, the issues  
23 in this case may be narrowed by motions related to the class action process.  
24  
25

1           **16. Expedited Schedule**

2           **N/A**

3           **17. Trial**

4  
5           Plaintiff has requested a jury trial. The expected length of trial is 5 court days.

6           **18. Disclosure of Non-Party Interested Entities or Persons**

7           Plaintiffs have no one to disclose other than parties themselves.

8           **19. Other Matters**

9  
10          None.

11  
12         Dated: August 12, 2008

13                                 By: /s/ ADAM WANG  
14   Adam Wang  
15   Attorney for Plaintiffs